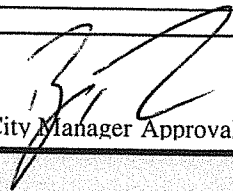




Report to the Auburn City Council

Action Item

Agenda Item No. **6**City Manager Approval


To: Mayor and City Council Members
From: Robert Richardson, City Manager
Date: April 8, 2013
Subject: Auburn School Park Preserve Community Garden Lease Agreement

The Issue

Shall Council authorize and approve the Operations Plan for the Auburn School Park Preserve Community Garden?

Conclusion and Recommendation

Staff recommends that City Council BY RESOLUTION, authorize the City Manager to execute the Community Garden Lease with Placer Land Trust.

Background

The Community Garden Project was one of the original elements of the Auburn School Park Preserve Master Plan. Active construction on the Community Garden has been undertaken by community members since 2008.

The Steering Committee of the Susan Cooley-Gilliom School Park Preserve Community Garden has requested the City Council's approval to implement the final stage of the Community Garden by approving the Community Garden Lease Agreement. The Community Garden Lease Agreement enters the City into agreement with the Placer Land Trust. The Lease Agreement includes the Operational Plan for the Community Garden and is for a one year period from April 9, 2013 to April 9, 2014. The agreement may be extended for additional terms if agreed upon by both parties prior to the expiration of the agreement.

The Steering Committee has projected the public dedication of the Susan Cooley- Gilliom School Park Preserve Community Garden to be June 13, 2013.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

Fiscal Impact

The Lease Agreement for the 10,000 square foot of vacant agricultural space adjacent to City Hall will be leased to the Placer Land Trust for \$1 annually.

Attachments: Community Garden Lease (includes Exhibit A: Site Plan & Exhibit B: Operations Plan)
Resolution

CITY OF AUBURN

COMMUNITY GARDEN LEASE

BY AND BETWEEN

CITY OF AUBURN,
A MUNICIPAL CORPORATION
("CITY")

AND

PLACER LAND TRUST
("TENANT")

**CITY OF AUBURN
COMMUNITY GARDEN LEASE**

IDENTIFICATION

This Lease, made and entered into as of this ____ day of _____, **2013**, by and between the City of Auburn, a Municipal Corporation (herein called "City"), and the Placer Land Trust, a California nonprofit public benefit corporation (herein called "Tenant").

RECITALS

- A. The City owns, in fee, the Auburn School Park Preserve ("Park"), which is subject to a Conservation Easement dated November 19, 2004, held by Placer Land Trust and recorded in the official records of Placer County on December 17, 2004, as Document Number 2004-0169168 (the "Conservation Easement").
- B. The City wishes to use a portion of the Park for a community garden, consistent with the terms of the Conservation Easement.
- C. Tenant wishes to organize and manage the construction, maintenance, and upkeep of a community garden within the Park, for the benefit of the community.
- D. Tenant serves as the administrative and fiscal agent for a group of individuals who wish to operate the Susan Cooley-Gilliom School Park Preserve Community Garden, in the Park.

For, and in consideration of, the mutual covenants hereof, City hereby leases to Tenant and Tenant hereby hires from City the Premises as hereinafter described, upon the terms and conditions hereinafter set forth.

1. Premises.

The leased premises ("Premises") consist of approximately 10,000 square feet of vacant space on the Park adjacent to City Hall, 1225 Lincoln Way, Auburn, CA 95603 ("City Hall"). The Premises are depicted on **Exhibit A**, attached to this Lease and incorporated herein.

2. Use of Premises.

A. The Premises shall be used as a community garden as described in the Operations Plan, attached to this Lease as **Exhibit B** and incorporated herein. All uses shall be in conformance with (i) applicable zoning regulations of the City of Auburn, (ii) laws and rules imposed by any governmental agency, and (iii) the Conservation Easement. City has determined that Tenant's use of the Premises as a community garden as described in the Operations Plan so conforms.

B. Tenant shall be permitted to use the "Storage Facilities" on the premises unless otherwise notified that said area is required for use by the City.

C. Tenant agrees that the use of the Premises, the development thereof and any construction thereon shall be in accordance with the applicable provisions of city codes and ordinances and any other state or federal law, code or regulation applicable to Tenant's use. City, in its proprietary capacity and at no cost to City, shall assist Tenant to the greatest extent possible and as appropriate in assuring this compliance. Tenant acknowledges that nothing contained in this

Lease shall be deemed to entitle Tenant to any City permit or other City approval necessary for the use or rehabilitation of the Premises, or waive any applicable City requirements relating thereto. This Lease does not (a) supersede, nullify or amend any condition which may be imposed by the City in connection with the use of the Premises, or (b) amend any City laws, codes or rules.

D. Tenant shall park automobiles only in designated spaces unless otherwise granted permission. Tenant may use the parking lot located on College Way between High Street and Auburn-Folsom Blvd. The parking lot located behind City Hall may be used for loading and unloading, but not for general parking purposes.

E. Tenant shall not use or allow any person to use the Premises in any manner that constitutes waste or nuisance, or that would unreasonably annoy members of the public.

F. City reserves the right to maintain, develop and improve the Premises as it sees fit, regardless of the desires or views of Tenant, and without interference or hindrance from Tenant; provided that City's actions shall not substantially interfere with Tenant's use of the Premises in accordance with this Lease.

G. City reserves the right to maintain and keep in repair all publicly owned facilities. City reserves the right to direct and control all activities of Tenant in this regard to include restriction of Tenant's use of the Premises; provided that such activities do not substantially interfere with Tenant's use of the Premises in accordance with this Lease.

3. **[Reserved].**

4. **Term of Lease.**

The Term of this Lease shall be a period of one year commencing at 12:01 A.M. on April 9, 2013 (the "Effective Date") and ending at 11:59 P.M. on April 9, 2014, but may be extended for additional terms if agreed to in writing by the parties prior to the expiration or termination of the Lease. This Lease may be terminated by either party for any reason, sixty (60) days after receipt of written notice of termination by the other party.

5. **Fixed Rent.**

Except as provided herein, Tenant shall pay to City in lawful money of the United States of America, without deduction, offset or abatement at City's principal place of business, or at such place or places, or to such person or persons as may be designated from time to time by City, a Fixed Rent of one dollar (\$1.00) per year (the "Fixed Rent") payable on the Effective Date and on each anniversary of the Effective Date continuing through the term of this Lease and any extensions. All rent shall be paid by Tenant to City, in advance, at 1225 Lincoln Way, Auburn, CA, 95603, or any other place or places that City may from time to time designate by 30 day written notice given to Tenant.

6. **Repairs, Maintenance and Improvements.**

A. Tenant represents that Tenant has inspected and examined the Premises and accepts them in their present condition together with those agreed upon improvements specifically necessary for Tenant's occupancy of the Premises. It is further agreed that City shall not be required to

maintain the Premises as originally accepted and make any improvements or repairs upon the leased Premises or any part of them, unless separately agreed to by the parties.

B. Tenant shall make no improvements to the Premises without first obtaining the written consent of the City. Any such improvements or alterations to the Premises must be in compliance with any and all governing building codes and the restrictions set forth in the Conservation Easement. Any permanent fixtures or improvements made to the Premises shall become the property of the City upon termination of the lease. As used in this paragraph, "permanent fixtures" refers to fixtures which cannot be removed from the Premises without causing damage to the Premises in excess of \$500. Tenant agrees to maintain, at Tenant's sole expense, the storage facilities and any physical structures on the Premises as depicted in Exhibit A hereto.

C. Should any repairs or maintenance of structures or any other improvements on the Premises be necessary, in the judgment of the City, to preserve public health and safety, the City reserves the right to make such repairs or improvements.

7. **Entry.**

Tenant agrees that City, its agents or employees, upon reasonable notice to the Garden Manager, may enter upon the Premises at any time for the purpose of inspection of the Premises or for performing any necessary repair of Premises.

8. **Utilities.**

City agrees to provide water to the Premises for reasonable use by Tenant. Tenant will be responsible for providing all other utilities and services to the premises, including, but not limited to, garbage collection dedicated to Tenant's use.

9. **Indemnification.**

Upon the Effective Date of the Lease, Tenant shall, at all times during the term of this Lease, indemnify and save harmless City and its officers, agents and employees from and defend the same against any and all claims, liens, liability, expense (including attorneys' fees), losses and judgments arising from death or personal injuries or from the loss or destruction of, or damage to, property of any person whomsoever resulting from the negligent, reckless or otherwise wrongful acts or omissions of Tenant, Tenant's officers, agents, contractors, permittees or employees with respect to use of or Tenant's obligation to maintain the Premises and any improvements thereon. City shall not be liable to Tenant or any other person whomsoever for death or personal injury or for loss or destruction of, or damage to, property in, on or about the Premises and any improvement thereon, unless as a direct result of City's negligent, reckless or otherwise wrongful acts, errors, or omissions.

Upon the Effective Date of the Lease, City shall, at all times during the term of this Lease, indemnify and save harmless Tenant and its officers, agents and employees from and defend the same against any and all claims, liens, liability, expense (including attorneys' fees), losses and judgments arising from death or personal injuries or from the loss or destruction of, or damage to, property of any person whomsoever resulting from the negligent, reckless or otherwise wrongful acts or omissions of City, City's officers, agents, contractors, permittees or employees with respect to the Premises and any improvements thereon. Tenant shall not be liable to City or any other person whomsoever for death or personal injury or for loss or destruction of, or damage to, property

in, on or about the Premises and any improvement thereon, unless as a direct result of Tenant's negligent, reckless or otherwise wrongful acts, errors, or omissions.

10. Insurance.

A. Tenant shall obtain insurance coverage beginning on the Effective Date and continuing through the entire Lease term. The acceptable insurance shall at least include property insurance against all risks of loss to any tenant improvements or betterments; and

B. Tenant shall maintain limits no less than general liability \$1 million per occurrence for bodily injury, personal injury and property damage. If a form with a general aggregate limit is used, either the general aggregate limit shall apply separate to this Lease or the general aggregate limit shall be twice the required occurrence limit.

C. Any deductibles or self-insured retention must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or Tenant shall provide a financial guaranty satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of ownership, maintenance or use of the Premises leased to Tenant.

(2) Tenant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after 30 days' prior written notice by mail, or after 10 days prior written notice by mail if cancellation is due to non-payment of premium, has been given to City.

E. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. Tenant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Section 10. All certificates and endorsements are to be received and approved by City before any work or improvements or alterations to the Premises commence. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

11. Events of Default by Tenant.

Each of the following events shall constitute "an event of default of Tenant":

A. Tenant's failure to pay the rent herein fixed for the payment hereof;

B. Tenant's failure to pay any other amounts owing hereunder within ten (10) business days after receipt of an invoice for such costs;

B. Tenant attempt to make or allow to be made any unauthorized subleasing, encumbrance, assignment or other transfer of the Premises.

C. The failure of Tenant to abide by the terms, covenants or conditions as specified in Section 2.A.

D. Tenant's failure, after 60 days' written notice from City, to keep, perform or observe any other term, covenant or condition of this Lease to be kept, performed or observed by Tenant;

E. Tenant's filing of a voluntary petition in bankruptcy, or the assignment of all, or substantially all, of Tenant's assets for the benefit of Tenant's creditors or the institution of proceedings in bankruptcy against Tenant or the appointment of a receiver of the assets of Tenant; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an "event of default by Tenant," unless Tenant fails to procure a dismissal thereof within 60 days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

12. Results of Tenant's Default.

Upon the occurrence of an "event of default of Tenant," and after 60 days' written notice from City, City, besides any other rights or remedies it may have, shall have as only allowed by law the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant. Should City elect to re-enter as herein provided, or should it take possession pursuant to any notice provided for by law, it may either terminate this Lease, relet the Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations and repairs to said Premises and improvements. Tenant shall be liable to City for all costs incurred prior to termination including, without limitation, Tenant's portion of water, insurance costs and costs to restore the Premises to its condition as of the date of this Lease, reasonable wear and tear excepted.

13. Nonwaiver of Defaults.

The waiver by City of any breach by Tenant of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition of this Lease. No term, covenant or condition hereof can be waived except by the written consent of City and forbearance or indulgence by City, in any regard whatsoever, shall not constitute a waiver of the terms, covenants or conditions to be performed by Tenant to which the same may apply, and until complete performance by Tenant of the term, covenant or condition, City shall be entitled to revoke any remedy available to it hereunder or by law, despite such forbearance or indulgence.

14. Subordination for Benefit of City.

If City desires this Lease to be subordinated to any mortgage, deed of trust or other encumbrance ("Fee Mortgage") now or hereafter placed upon the Park by City, and all advances,

whether obligatory or optional made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof, this Lease, at City's election, shall be subordinate to any such Fee Mortgage provided City first obtains from the lender a written agreement that provides substantially as follows: As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease.

Subject to the foregoing, Tenant agrees to execute any documents required to effectuate such subordination, and failing to do so within 10 days after City's written request to Tenant therefore, does hereby irrevocably appoint City as Tenant's attorney-in-fact in Tenant's name to do so.

15. Tenant's Encumbrance.

Tenant may not encumber Tenant's interest in the Premises or in any improvements Tenant places thereon by mortgage, deed of trust or other instrument.

16. Reserved.

17. Subletting/Assignment.

A. Tenant may sublet garden space as set forth in Tenant's Operations Plan. Except as expressly set forth in the Operations Plan, Tenant may not sublease or assign all or any portion of the Premises or the Improvements constructed or installed on the Premises without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any such sublease consented to by City shall provide (i) such subleasing shall be subject to the terms of this Lease, (ii) such subleasing shall comply with all applicable statutes and regulations, (iii) all improvements and alterations constructed on the Premises shall have been approved by City pursuant to Section 6 of this Lease, (iv) Tenant shall remain liable under this Lease; and (v) each sublease shall contain a provision satisfactory to City requiring the subtenant, if City shall so demand, to attorn to City if Tenant defaults under this Lease, and if the subtenant is notified of Tenant's default and instructed to make subtenant's rental payments to City, but City shall have no obligation to recognize the subtenant or to allow any subtenant to remain in possession upon the default of Tenant.

B. City's consent to an assignment of Tenant's interest in this Lease shall be conditioned upon (i) execution by Tenant and its assignee (the "Assignee") of an assignment and assumption agreement in form satisfactory to City, and (ii) payment by Tenant or Assignee of all state, local and any other excise, transfer or documentary taxes imposed, if any, as a result of the execution of such assignment.

18. Effect of Failure to Comply.

No encumbrance, assignment or other transfer, whether voluntary, involuntary, by operation of law, under legal process, through a receivership, bankruptcy or otherwise, shall be valid or effective without the prior written consent and approval of City. If Tenant attempts to make or allow to be made any subleasing, encumbrance, assignment or other transfer then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this Lease, and upon

such breach, City may, at its option, terminate this Lease at once by written notice, and upon such termination this Lease shall end and be of no further force.

19. Condemnation.

If, during the term of this Lease there is a taking, or transfer of, or damage to all or any part of the Premises (Premises as used herein shall include all appurtenant interests such as access rights) for a public use by any individual or entity, public or private, possessing the power of eminent domain, whether by condemnation proceedings or otherwise (hereinafter referred to as "appropriation"), the rights and obligations of City and Tenant with regard to such appropriation shall be governed by the provisions of this article. City warrants that it will not engage in any action as contemplated by this section. Should the City engage in such action, this Section 19 shall be invalid.

A. The date of taking, as used in this article, is defined as the earliest of the following dates: (i) the date legal possession is taken, which is defined as the date, if any is established, after which the condemnor may take possession of the property as stated in an order authorizing the condemnor to take possession; (ii) the date a final order of condemnation or final judgment is filed or recorded or the date a deed is recorded in the event of a voluntary sale; and (iii) the date physical possession of the property is taken.

B. Total taking means an appropriation of the entire Premises or so much thereof as to prevent or substantially impair the conduct of Tenant's business unless Tenant elects to continue the Lease in effect. If during the term of this Lease there is an appropriation of the Premises which amounts to a total taking as herein defined, then the leasehold estate of Tenant in and to the Premises shall cease and terminate as of the date of such taking, and all rentals and other charges payable by Tenant to City hereunder and attributable to the Premises shall be paid up to the date of such taking.

C. The term "partial taking" shall mean the taking of a portion only of the Premises which does not constitute a total taking as defined above. If during the term of this Lease there shall be a partial taking of the Premises, this Lease shall terminate as to the portion of the Premises so taken at the date of taking as herein defined, but said Lease shall continue in force and effect as to the remainder of the Premises. The rental payable hereunder by Tenant shall, as of the date of taking, be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of such rent as the value of the part of the Premises remaining after the taking bears to the value of the entire Premises at the date of taking.

D. In the event the condemning agency shall abandon an eminent domain proceeding, either party hereto shall have the right to contest the condemnor's abandonment and a right to its respective costs and disbursements as defined and provided for in California law. If after the condemnor takes possession or the Tenant moves from the property sought to be condemned in compliance with an order of possession, the condemnor abandons the proceeding as to such property or a portion thereof, or if it is determined that the condemnor does not have authority to take such property or portion thereof by eminent domain and the condemnor is required by law to deliver possession of such property or such portion thereof to the party entitled to the possession thereof and pay damages as provided for in California law, then Tenant shall receive the award for costs and damages incurred by reason of Tenant being removed from possession of the Premises, but Tenant

shall be entitled to retake possession of the Premises and, in the event of such repossession by Tenant, all of the terms of this Lease shall remain in operation and effect.

E. All compensation and damages awarded for the taking of the Premises or any portion thereof shall, except as otherwise herein provided, belong to and be the sole property of City. However, any award that may be made for the taking of or injury to the improvements, and all other improvements constructed by Tenant on the Premises shall be equitably apportioned between Tenant and City if, at the time of the taking, the expected useful life of the improvements extends beyond the Termination Date provided for in Section 4. Otherwise, Tenant shall be entitled to such award. Tenant shall be entitled to any award for damage to Tenant's business or on account of any cost or loss Tenant may sustain in the removal of Tenant's fixtures, equipment and furnishings, or as a result of any alterations, modifications or repairs which may be reasonably required by Tenant in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Tenant's tenancy. Tenant shall also be entitled to that portion of any award that may be attributable to any severance damages to the remaining leasehold interest and to any improvements constructed by Tenant.

F. Each party shall bear his own costs, attorneys' fees, appraiser's fees and all other costs in connection with any matter contained in this article, except as may be otherwise provided.

G. Neither party hereto shall grant a right of entry to any condemnor without the written consent of the other party hereto.

20. Estoppel Certificates.

City and Tenant shall, respectively, at any time and from time to time upon not less than 10 business days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

A. That this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications);

B. That to its knowledge the requesting party is not in default under this Lease (or if any such default exists, the specific nature and extent thereof), and

C. The date to which rent and other charges have been paid in advance, if any.

Each certificate delivered pursuant to this section may be relied on by any prospective purchaser or transferee of the Premises or of City's or Tenant's interest hereunder or by any fee mortgagee of the Premises or of City's or Tenant's interest hereunder or by any assignee of any such mortgagee.

21. Mediation/Arbitration.

All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Lease, including, but not limited to, breach thereof ("Mediation/Arbitration Dispute"), except (a) the payment of rent, which Tenant acknowledges is an independent covenant not subject to offset or deduction, and (b) the matters described in Section 21.B (4), shall be decided under this Section 21 pursuant to mediation, and if necessary, arbitration. If Tenant defaults in the payment of rent, this Section 21 shall not apply and City may

pursue any and all legal and equitable remedies provided by law, including, without limitation, an unlawful detainer action, writ of possession, and a money judgment for unpaid rent.

A. Mediation.

(1) Any Mediation/Arbitration Dispute shall be referred to mediation before, and as a condition precedent to, the initiation of any arbitration proceeding.

(2) The parties shall submit any Mediation/Arbitration Dispute to an impartial neutral mediator selected by mutual consent of the parties. In the event the parties cannot agree on the selection of a mediator, the Mediation/Arbitration Dispute shall be referred to JAMS/Endispute, a professional mediation service. The parties shall equally bear the cost of mediation fees, subject only to the exception set forth in the next paragraph.

(3) If during the mediation a party ("offering party") makes a written offer of compromise to another party which is not accepted by such party ("refusing party") and the refusing party fails to obtain a more favorable result through arbitration, the refusing party shall pay the offering party all costs and expenses, including reasonable attorney fees and the cost of the mediator and arbitrator, incurred from the time the offer is refused.

B. Arbitration.

(1) A Mediation/Arbitration Dispute which is not resolved through mediation, as set forth above, shall be decided by neutral, binding arbitration and not by administrative proceeding or court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules governing the conduct of arbitration proceedings set forth in the California Code of Civil Procedure and the California Rules of Court. The parties may agree in writing to use different rules. The parties shall have the right to discovery in accordance with the provisions of the California Code of Civil Procedure. Judgment on any award of the arbitrator may be confirmed and entered by the court as provided for by California law.

(2) An arbitrator may be selected by mutual consent of the parties. If the parties cannot agree on selection of an arbitrator within 15 days from the date either party first requests arbitration, an arbitrator familiar with handling similar disputes shall be appointed by JAMS/Endispute. The cost of the arbitrator, arbitration costs and attorney fees shall be borne by the parties as may be determined by the arbitrator.

(3) Any demand for arbitration must be made in writing to the other party. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the claim is barred by the applicable statute of limitations.

(4) The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. This application shall not waive a party's arbitration rights under this Lease.

(5) The arbitrator shall have the power to grant legal and equitable remedies, and award damages, that may be granted or awarded by a judge of the Superior Court of the State of

California or the Federal District Court of the Eastern District of California. The arbitrator shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning and the award of the arbitrator shall be vacated or corrected for any such error or any other grounds specified in Code of Civil Procedure Section 1286.2 or Section 1286.6. The award of the arbitrator shall be mailed to the parties no later than 30 days after the close of the arbitration hearing. The provisions of the California Evidence Code shall apply to the arbitration hearing. The arbitration proceedings may be recorded by a certified shorthand court reporter. The party requesting a reporter shall pay for the reporter and if both sides request a reporter, the cost of the reporter shall be divided equally. Written transcripts of the proceedings may be prepared at the request of a party. A party requesting a transcript shall pay for the cost thereof.

22. Consent Not to be Unreasonably Withheld.

Whenever the consent, approval or permission is required hereunder by either Tenant or City, such consent, approval or permission is not to be unreasonably withheld.

23. Relationship Between the Parties.

City is neither a joint venturer with nor a partner or association of Tenant with respect to any matter provided for in this Lease. Nothing herein contained shall be construed to create any such relationship between the parties or to subject City to any obligation of Tenant hereunder.

24. Time of the Essence.

Time is of the essence of this Lease.

25. Lease Made in California.

This Lease has been made and shall be construed in accordance with the laws of the State of California. All duties, obligations and liabilities of City and Tenant with respect to the Premises are expressly set forth herein and this Lease can only be amended in writing.

26. Headings.

The headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provisions of this Lease.

27. Notices.

All notices to be given hereunder shall be in writing and shall be deemed given when received in the United States mail, postage prepaid, certified or registered, addressed as follows, or to such other address as from time to time may be designated by a party by written notice to the other parties:

A. "City"
City of Auburn
Office of City Manager
1225 Lincoln Way
Auburn, CA 95603

B. "Tenant"
Placer Land Trust
Attn: Executive Director
11661 Blocker Drive, Suite 110
Auburn, CA 95603

28. Surrender and Merger.

The voluntary or other surrender or termination of this Lease by Tenant or a mutual cancellation thereof shall not work a merger and shall, at the option of City, terminate all or any existing subleases or subtenancies or may, at the option of City, operate as an assignment to City of all such subleases or subtenancies.

29. Successors and Assigns.

Subject to the terms and conditions of Section 19 hereof, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

“CITY”

CITY OF AUBURN, CALIFORNIA, a
Municipal Corporation

By: _____
Robert Richardson
City Manager

“TENANT”

PLACER LAND TRUST, a California
nonprofit public benefit corporation

By: _____
Fred Yeager
President

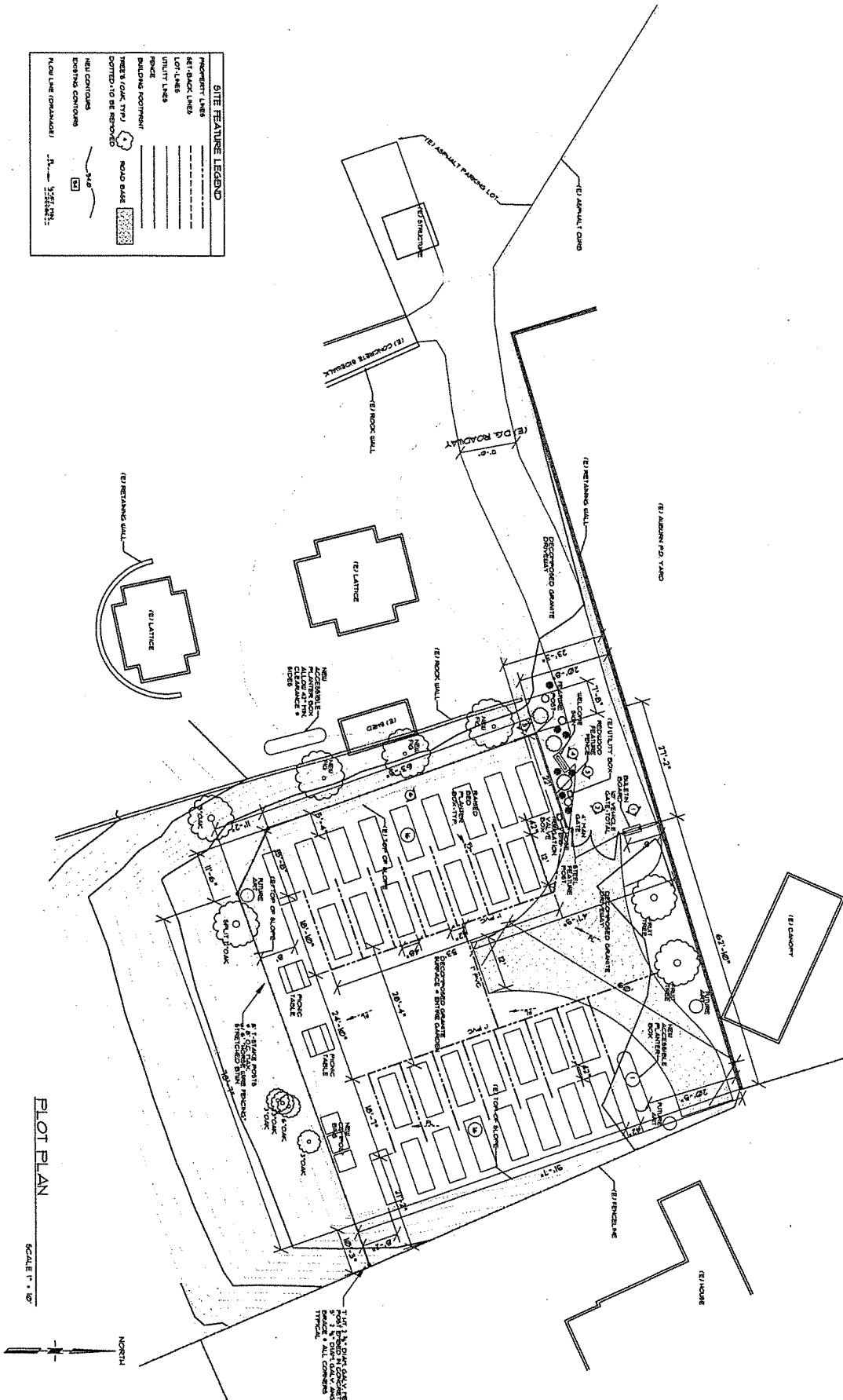
By: _____
Gregg McKenzie
Treasurer

APPROVED AS TO FORM:

Michael Colantuono, City Attorney

EXHIBIT A

SITE FEATURE LEGEND	
PROPERTY LINES	---
SET-BACK LINES	---
LOT LINES	---
UTILITY LINES	---
PAVING FOOTPRINT	---
THREE'S (OAK TYPE)	---
DOTTED TO BE REMOVED	---
NEW CONTOURS	---
EXISTING CONTOURS	---
NEW LINE (DRAINAGE)	---
NEW LINE (DRAINAGE)	---



PLOT PLAN

SCALE 1" = 10'

Exhibit B

**Susan Cooley-Gilliom School Park Preserve
Community Food Garden**

Date: April 8, 2013

To: Mayor and the City Council of Auburn
Manager, City of Auburn

The Steering Committee of the Susan Cooley-Gilliom School Park Preserve Community Food Garden requests your approval to implement the final stage of moving the garden into active community use. This community garden has been in development for the past three years in close cooperation with the City. Countless volunteer hours and more than \$20,000 in donated funds and services by local nonprofits and businesses, and with the ongoing oversight of the City of Auburn Public Works Department, have prepared the garden for public use.

As described in the enclosed Operation Plan, the Community Food Garden will be managed by a Garden Manager and a Community Steering Committee. The Operation Plan describes garden finances, organization, and other details. This plan has been reviewed and approved by School Park Preserve Committee members Janice Forbes and Robert Gilliom, representing Emigrant Trails Greenway Trust. Placer Land Trust, which has been acting as the administrative and fiscal agent for the Garden for the past two years, has agreed to continue in that role, and Dave Chappell has agreed to be retained as Garden Manager for the first year of operation.

With your approval, we wish to proceed immediately to advertising the availability of garden plots for Auburn residents and to initiate active gardening as early as possible in April. We plan on a public Garden opening event in June.

Sincerely,

Steering Committee

Susan Cooley-Gilliom School Park Preserve Community Food Garden

Susan Cooley-Gilliom School Park Preserve

Community Food Garden: Operations Plan

Introduction

The planning of the Susan Cooley-Gilliom School Park Preserve Community Food Garden began in 2001. Through the efforts of many dedicated individuals, and in concert with the City of Auburn, the garden is nearing completion and can now begin accepting community members as gardeners. Our vision is that the Community Food Garden will become a place where people of Auburn work and learn together to produce fresh and healthy food for their families and the community.

The garden includes two levels of garden space in a corner of Auburn's School Park Preserve, in downtown Auburn, California. The lower level provides common-ground meeting space and open use by the public at large. Storage facilities to house tools and equipment for the maintenance of the two gardens is located in this area, and can be utilized by community members, volunteers, and organizations wishing to host public functions, or educational classes at the site. The upper garden is a conventional food producing community garden. It consists of 26 planter boxes and has infrastructure to provide water to each bed. The boxes are protected from wildlife damage and vandalism by a six-foot fence providing security for the gardeners in their efforts. The planter boxes are intended for use as personal gardening for the box holder, with a few organizations utilizing some of the boxes.

The majority of the heavy construction for the garden is complete. The projected public dedication date is June 13, 2013, but with gardeners occupying the boxes by mid-April, 2013.

The project has been funded and assisted by various sources, organizations and businesses, including private donations of materials and assistance. A preliminary list of donors is provided below. Placer Land Trust has provided administrative support and monitoring of conformance with requirements of the conservation easement.

Contributors to the Susan Cooley-Gilliom School Park Preserve
Community Food Garden

City of Auburn
Auburn Police Department
Auburn Fire District
Auburn Downtown Rotary Club
Lions Club of Auburn
Placer Land Trust
Janice Forbes
Bob Gilliom
Joanne Neft
Emigrant Trails Greenway Trust
Mountain Mandarin Growers Association
Home Depot
Robinson Sand and Gravel
Livingston's G&P
Michael Kent Murphy Architecture and Design
Yamazaki Landscape Design
Placer Equipment Supply
Sierra View Nursery and Landscape
Vermicrop Organics
Cascade Gardens
Blake Willick and Nick Willick
Andersons Sierra Pipe and Supply
Eisley Nursery
NTD Architecture
Old Towne Pizza
True Value Hardware
California Conservation Corps
Norris Electric
Recology Auburn Placer
Auburn Boys and Girls Club

This document summarizes the operational plan for the garden. This is intended to be a "living document" that addresses our immediate objectives and will then be used as a tool to assist in the ongoing operation of the garden.

Timeline

Our goal is to have the garden fully functioning this summer and to establish an organizational structure that allows for community involvement at every level. We envision a self-sustaining community garden that allows for organic gardening, food production for individuals and community food banks, and education. A project timeline

of expected goals and activities during the final phases of installation is provided in **Appendix I.**

Organization

The Community Garden is a program of the Placer Land Trust and operates with the administrative and fiscal support of the Trust. The Land Trust also acts as the liability insurance carrier for the activities in the community garden.

The activities and operations of the garden will be guided by a committee of seven community members, each taking the responsibility for a specific function on the committee as it pertains to the garden operation as a whole.

The garden manager, who will work under a services contract for Placer Land Trust, oversees the daily operation of the garden and the planned community activities therein.

The steering committee will eventually expand to represent the interests of all the gardeners on the site and will include more community members and representatives of organizations wishing to participate in using the common-space gardens. The garden steering committee will meet weekly during the final phases of construction, and at least quarterly through the year to address items for discussion. Included in the committee are community members who will facilitate the operations of the garden.

Charter Steering Committee Members:

Dave Chappell, Garden Manager
Maureen Murphy, Project Architect
Katy Fries, Secretary
Brian Fries, Graphic Design and Consultant
Christy Dyer, Education and Outreach
Tanya Hibbard, Community Outreach
Mary Rositto, Grantwriter and Information Support
Jerome Beauchamp, Treasurer

Financial Sustainability

The garden committee is presently evaluating and pursuing potential sources for funding the ongoing garden operations as delineated by the basic budget set out in three-year forecasts provided in **Appendix II.**

Primary sources of funds, in addition to fees paid by gardeners, include:

1) Grants - The committee will be submitting grant applications to various granting agencies, including the Auburn Community Foundation. We intend to establish an ongoing grant program that will fund future improvements and special projects.

2) Community outreach and fundraising campaigns - Proposals include, but are not limited to:

- Featured sponsorships by the community and businesses (boxes and garden features)
- Engraved brick sponsorships
- Park community events, musical, and art related fundraising
- Conducting workshops and educational events

Rules and Regulations

All garden participants will be required to abide by a set of rules and regulations that are provided in draft form in **Appendix III**. All participants will sign, and have on file with the City of Auburn, Liability Release Forms. The garden manager will be responsible for administering the rules and regulations. The garden steering committee will moderate and resolve issues that arise in the day-to-day operations of the community garden and will continue to refine and develop the policies so that they best represent reality and our enduring goals. This is a time-tested approach used by many community gardens around the country and in our region.

Forms

Draft working versions of forms for garden operations are provided in **Appendix IV**.

Monitoring Progress

We will establish ongoing tracking and management protocols that will allow us to actively manage the evolving experience with the community garden. Some of the protocols include:

- Establishing e-mail and contact databases that maintain contact with the many that participate in and visit the garden;
- Creating financial management tracking systems that will provide relevant and up to date information;
- Quarterly review of benchmarks established by the new steering committee as set forth Quarter 3 of 2013 and subsequent years; and
- Presentations to, and evaluations from partners involved in community efforts. This will include the City of Auburn and the Placer Land Trust.

Appendix I

Susan Cooley-Gilliom School Park Preserve Community Food Garden: Timeline for 2012-2013

December/January/February

- Filling of the boxes with soil and amendments.
- Testing of water pressure for the garden
- Finishing of water faucets in the boxes
- Testing of electrical to the upper site

February/March

- Develop a plan for fencing the garden area, including a budget, and timeline
- Finishing of parking area and turn-around up above
- Establishment of garden use policies and standards of participation.
- Application of materials for the pathways (likely decomposed granite)
- Final inspections and clearance from the city to proceed
- Begin scheduling volunteers for maintenance of the lower garden
- Begin campaign for marketing of the project and advertise boxes for rent with an April date for occupation

March/April

- Convene a general meeting and begin forming a steering committee, made up of community members (perhaps 12)
- Begin a sponsor (or sponsors) search (sponsors can help defray materials costs as partners in the project, and help to finance the opening ceremony in June)
- Next steps for garden features (benches, shade areas, etc):
 - Begin developing a plan for use of the arbor areas in the lower garden
 - Begin planning of opening celebration June 13, 2013
 - Begin scheduling of garden demonstrations by civic groups
 - Design and construct security features
 - Design and construct signage for the garden

May/June

Prepare for grand opening/dedication

June/July

Convene Steering Committee to update operational plans

Appendix II
Susan Cooley-Gilliom School Park Preserve Community Food Garden:

Cash
Flow

Annual Sources of Funds	Units			Dollars Per	2013	2014
	year 1	year 2	year 3			
Box Rental	26	26	26	\$ 60	\$ 1,560	\$ 1,560
Box Sponsorships						
One Year	26	26	26	\$ 100	\$ 2,600	\$ 2,600
Fundraisers						
"Brick" Sales	75	50	25	\$ 75	\$ 5,625	\$ 3,750
Placer County Foundation					\$ 500	\$ 500
Placer Land Trust						
Greenways Foundation					\$ 5,000	\$ -
Social Organizations						
Auburn Downtown Rotary					\$ -	\$ -
Auburn Lions Club					\$ -	\$ -
Grants						
Hip Hop Council					\$ 500	\$ -
Other						\$ 1,000
Workshops	1	2	3	\$ 200	\$ 200	\$ 400
Total Annual Sources of Funds					\$ 15,985	\$ 9,810

Annual Recurring Expenses			
Irrigation		\$ 500	\$ 200
Cost of Bricks	\$ 15.00	\$ 1,125	\$ 750
Tools		\$ -	\$ -

	200	200
	\$	\$
Marketing	500	250
	\$	\$
Events - Workshops	200	400
	\$	\$
Box Repair	100	300
	\$	\$
Soil	-	500
		\$
Decomposed Granite		400
	\$	\$
Site Management	2,500	5,000
	\$	\$
Liability Insurance	500	500
	\$	\$
Total Recurring Expenses	5,625	8,500

Capital Expenses		
	\$	
Gate - Permanent	2,000	
	\$	
Gate - Temporary	200	
	\$	
Sign / Bulletin Board	300	
Turnaround Area (upper garden) Weed Cloth, Road Base, Decomposed Granite		
	\$	
Weed Cloth	500	
	\$	
Road Base	1,000	
	\$	
Decomposed Granite	2,000	
	\$	\$
Communal Area Improvements (upper garden)	-	2,000
	\$	\$
Additional Boxes	-	4,000
	\$	
Equipemt	600	
	\$	\$
Total Capital Expenses	6,600	6,000

	\$	\$
Net Cash Flow	3,760	(4,690)
	\$	\$
Cummulative Cash Flow	3,760	(930)

Appendix III

Susan Cooley-Gilliom School Park Community Food Garden:

Rules and Regulations

I. Overview

The Susan Cooley-Gilliom Community Food Garden is established in the Auburn School Park Preserve for community members who will share a sustainable growing space and encompasses education, health, nutrition and enthusiasm. The garden has a community space and a members' space. Both will be used for growing, education and outreach. The member space will be enclosed with a deer fence and be accessible by garden members, invited guests, and to the public at specified times.

II. Membership

Anyone 18 years or older who lives in Auburn may rent a box in the Community Garden. Non-profit organizations that rent a box must be based in the Auburn zip codes 95602, 95603, 95604.

III. Member Obligations

1. Members must be involved in the hands-on cultivation of their beds.
2. Members may not sublease their plot.
3. Members are responsible for the year-round maintenance of their boxes and surrounding pathways. Areas are to be kept free of weeds, trash and other debris at all times. Members who do not maintain their boxes will be notified and be given 30 days to rectify it.
4. Members must attend a minimum of one general meeting and one workday per year. We plan to hold two general meetings and two workdays per year. If you are unable to attend a meeting/workday, you must make arrangements with the Garden Management Team.
5. Members are responsible for providing and maintaining all related drip irrigation tubing and heads for their plants.

IV. Responsibilities When in the Garden

- Be a steward for the park in general. Speak up and/or report any inappropriate activity to the garden manager or to the police if it is a safety issue.
- Report any problems with safety or malfunctions to the garden manager as soon as you are aware of them.
- No smoking is permitted within the fenced garden area.
- Children and students must be supervised at all times.
- Be sure the gate is locked when you leave.
- The garden is open to members from dawn to dusk.

V. Plot Allocation and Fees

1. One garden box per individual, family or organization
2. The person whose signature appears on the Registration Form is considered the primary member and is ultimately responsible for the garden box.
3. Garden boxes are issued on a year-to-year basis from January 1 – December 31.
4. Gardeners must complete a Registration Form and pay their annual fee by November 30th.
5. Current gardeners in good standing have the option of renewing their membership each year.
6. A waiting list will be established if others are waiting for a box to become available. Prospective gardeners will add their name to the list and they will be contacted in the order listed when boxes become available.
7. Gardeners who relinquish their membership may not directly transfer their membership to anyone else, including family and friends. All “Transfers” shall be administered by the Committee designee and adhere to established guidelines.
8. 2 ADA-accessible garden boxes will be available.
9. Fees for members will be \$60.00 per year.

VI. Gardening Guidelines

1. The garden adheres to organic gardening principles and non-gmo plant varieties.
2. *The use of non-organic pesticides and fertilizers is prohibited.*

Please refer to the "Garden Product Policy Guidelines" for more information.

2. Garden boxes must be maintained year round (ie. planted, weeded and harvested).
3. Gardeners are encouraged to plant a cover crop if they do not actively garden during winter.
4. Gardeners are encouraged to grow a variety of plants and must grow a minimum of two crops at all times.
5. Plants that tend to sprawl or reseed, such as mint, must stay within the box.
6. Crops that require excessive amounts of water may not be planted. (rice, taro, etc.)
7. Trees and woody perennials may not be planted without the consent of the Garden Management Team.
8. Please respect the need for neighbors' plants for sunlight when planting crops that may cause excessive shading.
9. All trellises or other structures that will manage vining of high-growing plants must be limited to 6' above the ground (base of the box) and must be approved, in writing, by the Garden Manager prior to the incorporation of the structure in the garden. All trellis or other structures shall be subject to the approval of the Garden Committee. No changes may be made to the box or additions of items like trellises that excessively damage the box structure.
10. Please remember the "pack it in, pack it out" rule. There is no trash service within the garden.
11. Please do not put plastic, bones, meat, or dairy products in the compost bin.
12. Group-managed boxes will have a designated person who will share the lock code on a limited basis.
13. Gardeners will be made aware that the community garden space is adjacent to a permanently protected oak woodland, and the use of the garden shall not be inconsistent with terms of the easement protection (on file).

VII. Parking

Please park in the lower lot located on College Way between High Street and Auburn-Folsom Blvd. The upper parking lot located behind City Hall should only be used for loading and unloading.

VIII. Garden Events

1. Docent-led open house events will be open to the public and members are encouraged to participate.
2. Classes open to both members and the public will be held seasonally with docent and teacher.
3. These guidelines are subject to change at the discretion of the Community Garden Governing Body by majority vote.

Appendix IV

Susan-Cooley Gilliom Community Food Garden:

Application

Garden Application

Please complete the application in ink. All information will be kept strictly confidential.

Please mail or drop off the completed application and payment to Mailing address:
_____ no later than November 30th.

Please include a check in the amount of \$60 made payable to:
Placer Land Trust (write:: "Community Garden Fund" in the memo section)

Personal/Organization Information

If the applicant is an Organization, please have the designated representative of the Organization complete the following information.

Today's Date: _____ Date of Birth: _____
Last Name: _____ First Name: _____
Address: _____ City: _____ State: _____ Zip _____

Home Phone: _____ Cell Phone: _____
Email: _____

Co-Gardeners Names and phone if different:

Name: _____ Phone _____

Number: _____

Name: _____ Phone _____

Number: _____

Name: _____ Phone _____

Number: _____

Name: _____ Phone _____

Number: _____

If an Organization:

Name of Organization: _____

Type of Organization: _____

Number of Members of Organization: _____

Briefly Describe the Purpose of the Organization: _____

Community Garden Information

Please check all that apply. Subject to review by the Governing Body.

☐ I had a garden box last year and would like to garden the same one this year.

☐ I would like to garden a different box this year.

☐ This is my first time participating in the garden.

☐ I have a disability and am interested in an easily accessible garden plot.

☐ I am requesting a fee reduction. (Please attach a letter including the requested amount and the reason for your request.)

☐ Please put me on the waiting list if a box is not currently available.

☐ I am interested in being a member of the Garden Management Committee and/or being involved in the management of the garden.

Do you have any special skills you are able or willing to contribute to the community garden?

What types of garden-related education would you be most interested in seeing offered?
(examples - organic cooking from you box, raw "un"-cooking, composting, winter gardening)

ALL APPLICANTS: In signing this application, I am stating that I am prepared to meet the physical demands of gardening in the SCG Community Garden. This includes maintenance, group workdays, meetings and responsibilities to other gardeners. I have read and understood the Susan Cooley-Gilliom Community Garden Guidelines and will adhere to all rules.

Signature _____

Print Name _____

Date _____

Received by: _____

Amount: _____

Date _____

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RESOLUTION NO. 13-
RESOLUTION AUTHORIZING THE AUBURN SCHOOL PARK PRESERVE
COMMUNITY GARDEN LEASE AGREEMENT WITH PLACER LAND TRUST

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the
City Manager to execute the Community Garden Lease Agreement with Placer
Land Trust.

A true and correct copy of said Lease Agreement is attached hereto as Exhibit
"A."

DATED: April 8, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular session meeting of
the City Council of the City of Auburn held on the 8th day of April 2013 by the
following vote on roll call:

Ayes:
Noes:
Absent:

Stephanie L. Snyder, City Clerk